IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

THURSDAY, THE 18TH JANUARY 2007 / 28TH PAUSHA 1928

OP.No. 8038 of 2002(F)

PETITIONER:

M/S. SAKTHI AUTO FUELS,
BHARATH PETROLEUM DEALER, CHITTUR, PALAKKAD,
REPRESENTED BY O.R.GOPALAKRISHNAN.

BY ADV. SRI.N.K.KARNIS

RESPONDENT:

THE MANAGER, TERRITORY (RETAIL)OFFICE,
BHARATH PETROLEUM CORPORATION LTD., IRUMPANAM,
ERNAKULAM DISTRICT.

BY ADV. SRI.N.N.SUGUNAPALAN

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 15/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

O.P. NO.8038/2002 APPENDIX

PETITIONER'S EXHIBITS:

1.	EXHIBIT P1:	TRUE COPY OF THE CARBON COPY OF THE REPORT SUPPLIED TO THE PETITIONER DATED 16.11.2001
2.	EXHIBIT P2:	TRUE COPY OF THE NOTICE ISSUED TO THE PETITIONER BY THE ASST. CONTROLLER LEGAL METROLOGY DATED 26.11.2001
3.	EXHIBIT P3:	TRUE COPY OF THE NOTICE ISSUED BY THE RESPONDENT TO THE PETITIONER DATED 29.1.2002
4.	EXHIBIT.P4:	TRUE COPY OF THE EXPLANATION SUBMITTED BY THE PETITIONER BEFORE THE RESPONDENT DATED 13.12.2001
5.	EXHIBIT.P5:	TRUE COPY OF THE REPORT OF THE SALE OFFICER OF THE RESPONDENT DATED 22.2.2002
6.	EXHIBIT.P6:	TRUE COPY OF THE JUDGMENT OF THE HON'BLE HIGH COURT OF KERALA IN O.P. 6929/2002 DATED 13.3.2002
7,	EXHIBIT P7:	TRUE COPY OF THE ORDER OF THE RESPONDENT DATED 11.3.2002 ISSUED TO THE PETITIONER
8.	EXHIBIT.P8:	TRUE COPY OF THE COVER ENCLOSING EXT.P7

(TRUE COPY)

P.A. TO JUDGE

S.SIRI JAGAN, J.

O.P. No.8038 of 2002

Dated this the 18th day of January, 2007

JUDGMENT

The petitioner is a retail dealer of Petroleum products of the Bharath Petroleum Corporation, the Manager,Territory (Retail) of which is the respondent in this Writ Petition. On inspection of the petitioner's business premises, variation of quantity of the products supplied to the petitioner was detected beyond the permissible limits. The variation was to the tune of 4217 litres of HSD and the variation was beyond the limit by 771. It was also detected that there was some tampering of statutory seal of the storage tank. Since these two instances constituted serious misconducts under the guidelines applicable, proceedings were initiated for taking action for that misconducts which resulted in Ext.P7 order, by which for the variation 15 days closure of the outlet and a fine of Rs.5,000/- was ordered and for the second violation of tampering with the seal, penalty of 15 days closure with a fine of Rs.10,000/- was ordered. This is under challenge in this Writ Petition.

2. The petitioner has raised two contentions. The first is that in view of Ext.P6 Judgment of this Hon'ble Court, Ext.P7 order was without jurisdiction. According to the counsel, in view of Ext.P6 Judgment or this Court the respondent could not have legally passed the impugned order. The second is that in view of Ext.P4 explanation, no action was warranted, against the petitioner.

3. Regarding the first contention, the learned counsel for the respondents submit that by Ext.R1(e) order in Review Petition the court which passed Ext.P6 had clarified that the respondent would be entitled to proceed with the action concerning the issue regarding the variation in stock. Regarding the second contention, the counsel for the respondents submit that going by Ext.P4 explanation itself, it can be seen that the same is not sustainable as the quantities calculated even as per the figures given by the petitioner would show that the variation will not tally.

4. I have considered the rival contentions in detail.

5. On the question of variation of stock it cannot be disputed that even going by the explanation given by the petitioner, it can be seen that there was, in fact, shortage of negative variation

beyond the permissible limit. In any event, in Ext.P7, it is specifically found that at the time of inspection, the petitioner had no such case as mentioned in Ext.P4. As a matter of precaution, the Senior Sales Officer checked the truck for any quantity trapped in the lorry unknowingly. Therefore, the claim of the petitioner that the balance HSD which was lying in the truck for want of sufficient storage capacity in the tank on the premises of the petitioner,the same was unloaded later cannot be accepted.

6. The contention on the basis of Ext.P6 Judgment raised by the petitioner is not sustainable since Ext.P6 did not prohibit the passing of final order. In fact, the court directed that proceedings initiated shall be continued and final order issued. The only prohibition was against enforcement of the final order till the disposal of the appeal filed by the petitioner before the Legal Metrology Authorities. Further, in Ext.R1(e) the same Judge had passed Ext.P6 permitting the respondent to proceed with the issue concerning stock variation. This being a question of fact, I cannot find any perversity in the conclusion reached by the respondents. I am afraid that my jurisdiction doest not extend to consideration of

this fact as a court of appeal . That being so I cannot interfere with the findings in Ext.P7.

7. In Ext.P6, this court had directed that in respect of the tampering with the seal, final orders passed shall not be implemented until after the appeal stated to have been filed by the petitioner is disposed of and that too subject to the orders in that appeal. The petitioner shall take appropriate action to produce before the respondents, the appellate order passed by the Legal Metrology Authorities, within a period of one month from the date of receipt of a copy of this Judgment. If the appeal has not yet been disposed of, the petitioner shall inform the respondents accordingly, and also take appropriate steps to get the appeal disposed of immediately. On receipt of the orders in appeal of the Legal Metrology Authorities the proceedings contemplated as per Ext.P7 shall be completed in accordance with the findings in that appeal.

Original Petition is disposed of accordingly.

(S.SIRI JAGAN,JUDGE)

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